

ORDINANCE NO. 3866

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, RELATING TO PROVIDING EXCEPTIONS TO HEIGHT LIMITATIONS FOR ROOF-MOUNTED SOLAR INSTALLATIONS AND ENERGY UPGRADES TO HVAC ROOF-TOP EQUIPMENT, AND PROVIDING APPROVAL FOR INSTALLATIONS ON NON-CONFORMING STRUCTURES AS TYPE 2 STAFF DECISIONS, AMENDING EDMONDS COMMUNITY DEVELOPMENT CODE SECTIONS 20.40.030 AND 17.40.020.

WHEREAS, on September 20, 2011, the City Council forwarded draft amendment language to the Planning Board for consideration; and

WHEREAS, the Council draft provided an exception for roof-mounted solar installations from building height limits, with the exception limited to an additional 36 inches in height; and

WHEREAS, this proposal is consistent with existing city policies in the Community Sustainability Element, and could be beneficial in situations where buildings are at or near the height limit; and

WHEREAS, the Planning Board concurred with the intent of the proposal, and also recommended a similar provision to allow for energy efficient upgrades to HVAC equipment installations that can't fit within the existing building envelope; and

WHEREAS, the Planning Board felt that to enable some notice to nearby residents, such approvals should be Type 2 staff decisions with public notice, appealable to the Hearing Examiner; and

WHEREAS, the City Council deliberated regarding the Planning Board's proposed amendments on December 6, 2011 and directed the City Attorney to prepare an ordinance to adopt these amendments; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO ORDAIN
AS FOLLOWS:

Section 1. Solar and HVAC Energy Upgrade Amendment. Section 21.40.030 of the Edmonds Community Development Code, entitled “Height,” is hereby amended to read as follows (new text is shown in underline; deleted text is shown as ~~strike-through~~):

21.40.030 Height.

A. Height means the average vertical distance from the average level of the undisturbed soil of the site covered by a structure to the highest point of the structure. (See subsection (D) of this section for exceptions to this rule.)

B. “Average level” shall be determined by averaging elevations of the downward projections of the four corners of the smallest rectangle which will enclose all of the building, excluding a maximum of 30 inches of eaves. If a corner falls off the site, its elevation shall be the average elevation of the two points projected downward where the two sides of the rectangle cross the property line. (See subsection (D)(1) of this section for exceptions to this rule.)

C. Accessory buildings that are attached to the main building by a breezeway, hallway, or other similar connection so that the accessory building is separated by 10 feet or less from the main building shall be considered to be part of the main building for purposes of determining the average level. For the purposes of this section, in order for an accessory building to be considered to be attached to and a part of the main building, the connecting structure must have a roof and be constructed of similar materials to both the main building and the accessory building so that it appears to be a unified and consistently designed building.

D. Height Exceptions.

1. (Reserved);
2. Church steeples;
3. Elevator penthouses, not to exceed 72 square feet in horizontal section, or three feet in height, for that portion above the height limit;

4. Chimneys, not to exceed nine square feet in horizontal section or more than three feet in height, for that portion above the height limit. In RM districts, chimneys shall be clustered. No multiple-flue chimney shall exceed 39 square feet in horizontal section. The first chimney shall not exceed nine square feet in horizontal section, and other chimneys shall not exceed six square feet in horizontal section;

5. Vent pipes not to exceed 18 inches in height above the height limit; and

6. Standpipes not to exceed 30 inches in height above the height limit.

7. Solar energy installations not to exceed 36 inches in height above the height limit. Such an installation may be approved as a Type II staff decision if it is designed and located in such a way as to provide reasonable solar access while limiting visual impacts on surrounding properties.

8. Replacement of existing rooftop HVAC equipment which exceeds the existing height limit, so long as the replacement equipment does not exceed the height of the existing equipment by more than 12 inches. The replacement equipment must have earned the Energy Star label.

Section 2. Solar Energy Installations Amendment. Section 17.40.020 of the Edmonds Community Development Code, entitled “Nonconforming building and/or structure,” is hereby amended to read as follows (new text is shown in underline; deleted text is shown as ~~strike through~~):

17.40.020 Nonconforming building and/or structure.

A. Definition. A nonconforming building is one which once met bulk zoning standards and the site development standards applicable to its construction, but which no longer conforms to such standards due to the enactment or amendment of the zoning ordinance of the city of Edmonds or the application of such ordinance in the case of a structure annexed to the city. Subject to the other provisions of this section, an accessory building that is not an accessory dwelling unit shall

be presumptively nonconforming if photographic or other substantial evidence conclusively demonstrates that the accessory building existed on or before January 1, 1981. In the case of a property that was annexed after January 1, 1981, then the date shall be that of the effective date of the annexation of the city of Edmonds. Such presumption may be overcome only by clear and convincing evidence.

B. Continuation. A nonconforming building or structure may be maintained and continued, unless required to be abated elsewhere in this chapter or section, but it may not be changed or altered in any manner which increases the degree of nonconformity of the building except as expressly provided in subsections (C) through (I) of this section.

C. Historic Buildings and Structures. Nothing in this section shall prevent the full restoration by reconstruction of a building or structure which is either listed on the National Register of Historic Places, the Washington State Register of Historic Places, the Washington State Cultural Resource Inventory, or the Edmonds Register of Historic Places, or is listed in a council-approved historical survey meeting the standards of the State Department of Archaeology and Historic Preservation. "Restoration" means reconstruction of the historic building or structure with as nearly the same visual design appearance and materials as is consistent with full compliance with the State Building Code and consistent with the requirements of Chapter 20.45 ECDC, Edmonds Register of Historic Places. The reconstruction of all such historic buildings and structures shall comply with the life safety provisions of the State Building Code.

D. Maintenance and Alterations.

1. Ordinary maintenance and repair of a nonconforming building or structure shall be permitted.

2. Solar energy installations on buildings that exceed existing height limits. A rooftop solar energy installation mounted on a non-conforming building that exceeds the existing height limit may be approved as a Type II staff decision if:

a. The installation exceeds the existing roof height by not more than 36 inches.

b. The installation is designed and located in such a way as to provide reasonable solar access while limiting visual impacts on surrounding properties.

23. Alterations which otherwise conform to the provisions of the zoning ordinance, its site development and bulk standards, and which do not expand any nonconforming aspect of the building, shall be permitted.

34. In an effort to provide modular relief, minor architectural improvements in commercial and multifamily zones may encroach into the nonconforming setback adjacent to an access easement or public right-of-way not more than 30 inches. Minor architectural improvements may also be permitted in nonconforming side or rear yard setbacks only if they intrude not more than 30 inches nor one-half of the distance to the property line, whichever is less. "Minor architectural improvements" are defined as and limited to bay windows, eaves, chimneys and architectural detail such as cornices, medallions and decorative trim. Such improvements shall be required to obtain architectural design review. Nothing herein shall be interpreted to exempt such improvements in compliance with the State Building and Fire Codes.

45. Alterations required by law or the order of a public agency in order to meet health and safety regulations shall be permitted.

E. Relocation. Should a nonconforming building or structure be moved horizontally for any reason for any distance, it shall thereafter come into conformance with the setback and lot coverage requirements for the zone in which it is located. Provided, however, that a building or structure may be moved on the same site without full compliance if the movement reduces the degree of nonconformity of the building or structure. Movement alone of a nonconforming building or structure to lessen an aspect of its nonconformity shall not require the owner thereof to bring the building or structure into compliance with other bulk or site development standards of the city applicable to the building or structure.

F. Restoration. If a nonconforming building or structure is destroyed or is damaged in an amount equal to 75 percent or more of its replacement cost at the time of destruction, said building shall not be reconstructed except in full conformance with the provisions of the Edmonds Community Development Code. Determination of replacement costs and the level of destruction shall be made by the building official and shall be appealable as a Type II staff decision under the provisions of Chapter 20.06 ECDC. Damage of less than 75 percent of replacement costs may be repaired, and the building returned to its former size, shape and lot location as existed before the damage occurred, if, but only if, such repair is initiated by the filing of an application for a building permit which vests as provided in ECDC 19.00.015, et seq., within one year of the date such damage occurred. This right of restoration shall not apply if:

1. The building or structure was damaged or destroyed due to the unlawful act of the owner or the owner's agent; or
2. The building is damaged or destroyed due to the ongoing neglect or gross negligence of the owner or the owner's agents.

G. Residential Buildings in Commercial Zones. Existing nonconforming buildings in commercial zones in use solely for residential purposes, or structures attendant to such residential use, may be remodeled or reconstructed without regard to the limitations of subsections (B), (E) and (F) of this section, if, but only if, the following conditions are met:

1. The remodel or reconstruction takes place within the footprint of the original building or structure. "Footprint" shall mean an area equal to the smallest rectangular area in a plane parallel to the ground in which the existing building could be placed, exclusive of uncovered decks, steps, porches, and similar features; and provided, that the new footprint of the building or structure shall not be expanded by more than 10 percent and is found by the city staff to be substantially similar to the original style and construction after complying with current codes.
2. All provisions of the State Building and Electrical Codes can be complied with entirely on the site. No nonconforming residential building may be remodeled or reconstructed if, by so doing,

the full use under state law or city ordinance of a conforming neighboring lot or building would be limited by such remodel or reconstruction.

3. These provisions shall apply only to the primary residential use on site and shall not apply to nonconforming accessory buildings or structures.

4. A nonconforming residential single-family building may be rebuilt within the defined building envelope if it is rebuilt with materials and design which are substantially similar to the original style and structure after complying with current codes. Substantial compliance shall be determined by the city as a Type II staff decision, except that any appeal of the staff decision shall be to the ADB rather than to the hearing examiner. The decision of the ADB shall be final and appealable only as provided in ECDC 20.07.006.

H. Subject to the other provisions of this section, an accessory building that is not an accessory dwelling unit shall be presumptively nonconforming if photographic or other substantial evidence conclusively demonstrates that the accessory building existed on or before January 1, 1981. In the case of a property that was annexed after January 1, 1981, then the date shall be that of the effective date of the annexation to the city of Edmonds. Such presumption may be overcome only by clear and convincing evidence.

I. BD5 Zone. The BD5 zone was created in part to encourage the adoption and reuse of existing residential structures for live/work and commercial use as set forth in ECDC 16.43.030(B)(5). In the BD5 zone, conforming and nonconforming buildings may be converted to commercial or other uses permitted by ECDC 16.43.020 without being required to come into compliance with the ground floor elevation requirements of ECDC 16.43.030(B).

Section 3. Severability. If any section, subsection, clause, sentence or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:


MAYOR DAVID O. EARLING

ATTEST/AUTHENTICATED:


CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 
JEFF TARADAY

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|-----------------------------|------------|
| FILED WITH THE CITY CLERK: | 12-16-2011 |
| PASSED BY THE CITY COUNCIL: | 12-20-2011 |
| PUBLISHED: | 12-25-2011 |
| EFFECTIVE DATE: | 12-30-2011 |
| ORDINANCE NO. <u>3866</u> | |

SUMMARY OF ORDINANCE NO. 3866

of the City of Edmonds, Washington

On the 20th day of December, 2011, the City Council of the City of Edmonds, passed Ordinance No. 3866. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, RELATING TO PROVIDING EXCEPTIONS TO HEIGHT LIMITATIONS FOR ROOF-MOUNTED SOLAR INSTALLATIONS AND ENERGY UPGRADES TO HVAC ROOF-TOP EQUIPMENT, AND PROVIDING APPROVAL FOR INSTALLATIONS ON NON-CONFORMING STRUCTURES AS TYPE 2 STAFF DECISIONS, AMENDING EDMONDS COMMUNITY DEVELOPMENT CODE SECTIONS 20.40.030 AND 17.40.020.

The full text of this Ordinance will be mailed upon request.

DATED this 21st day of December, 2011.


CITY CLERK, SANDRA S. CHASE

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH

} S.S.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

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The full text of this Ordinance will be mailed upon request.

DATED this 21st day of December, 2011.

CITY CLERK, SANDRA S. CHASE

Published: December 25, 2011.

Summary of Ordinance

No. 3866

City of Edmonds

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

December 25, 2011

and that said newspaper was regularly distributed to its subscribers during all of said period.

Jody Stahl

Principal Clerk

Subscribed and sworn to before me this

26th

day of December, 2011

[Signature]

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.